



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED]
LIN 99 243 34501

Office: Nebraska Service Center

Date:

AUG 29 2000

IN RE: Petitioner
Beneficiary [REDACTED]

APPLICATION: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(K)

IN BEHALF OF PETITIONER:
[REDACTED]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Dominican Republic, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K).

The director denied the petition after determining that the petitioner had failed to submit evidence of the termination of his prior marriage of the beneficiary.

On appeal, counsel asserts that the petitioner furnished the Sentence & Pronouncement prior to the January 29, 2000 deadline granted by the director to submit additional evidence. He states that the director, however, prematurely denied the petition on January 13, 2000.

Section 101(a)(15)(K) of the Act defines a nonimmigrant in this category as:

An alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission, and the minor children of such fiancée or fiancé accompanying him or following to join him.

Section 214(d) of the Act, 8 U.S.C. 1184(d), states, in pertinent part, that a fiancé(e) petition:

shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person....

The petition was filed with the Service on October 8, 1999. The petitioner was requested on November 3, 1999, to submit: (1) the divorce Pronouncement/Pronunciamento for the termination of the marriage of [REDACTED] and [REDACTED] and (2) proof of the legal termination of the marriage of [REDACTED] and [REDACTED].

The petitioner furnished a copy of the pronouncement of

the final divorce between the beneficiary and [REDACTED] registered on July 30, 1999. The petitioner, however, failed to submit evidence of the legal termination of his prior marriage to the beneficiary.

Counsel asserts that the director prematurely denied the petition on January 13, 2000, prior to the January 29, 2000 deadline given by the director to submit additional evidence. It is noted that upon counsel's submission of additional evidence, the director advised counsel on February 7, 2000, that if he wished further consideration of the director's decision, he could submit a Motion to Reopen/Reconsider to the Service office in letter form.

Counsel filed an appeal to the director's decision on February 10, 2000. The petitioner had the opportunity to submit additional evidence on appeal; the record still contains no evidence of the termination of the petitioner's prior marriage to the beneficiary.

The petitioner has not complied with the director's request for additional evidence, and he has failed to establish that he and the beneficiary were legally able to marry at the time the petition was filed. Further, although not addressed by the director, there is no evidence in the record to establish that the petitioner and the beneficiary met in person between October 9, 1997 and October 8, 1999, the date the petition was filed. The petitioner claimed that he met the beneficiary "some years ago at a Christmas party in Santo Domingo and have been in contact ever since."

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.